

FILED
4:27 pm, 6/5/18
Stephan Harris
Clerk of Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

SARAH MOUNTAIN,

Plaintiff,

vs.

COMMUNITY HEALTH CENTER OF
CENTRAL WYOMING INC.,

Defendant.

Case No: 18-CV-72-NDF

ORDER GRANTING MOTION TO DISMISS

This matter is before the Court on Defendant's Motion to Substitute Defendant to Dismiss Complaint for Lack of Subject Matter Jurisdiction. The Court has reviewed the motion, response, and reply and is fully informed in the premises.

On May 4, 2018, the United States removed this case to federal court pursuant to 42 U.S.C. § 233(c), based on a certification by the United States Attorney that CHCCW was acting "within the scope of its employment" at the time of the incident alleged in the Complaint. (Doc. 1). In addition to providing for removal to federal court, §233(c) also requires this proceeding is "deemed a tort action brought against the United States under the provisions of Title 28 and all references thereto."

Defendant asserts that the United States is the proper defendant and must be substituted as the defendant in this case. Additionally, Defendant asserts the action must proceed under the Federal Tort Claims Act (FTCA). For this reason, Defendant claims this case must be dismissed because it is premature, because Plaintiff has not followed

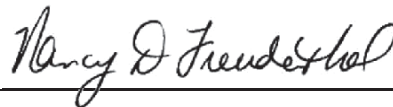
the administrative remedies provided by the FTCA. Plaintiff filed her administrative claim on February 23, 2018, but Health and Human Services (HHS) has not taken any action on the claim and the six month period has not passed. Plaintiff states she has no evidence to suggest the certificate is inadequate and if the Court finds the United States is the proper party, then the United States should be substituted and the case should be dismissed without prejudice.

The Court finds the United States has provided the proper certification asserting CHCCW was an employee of the Public Health Service for purposes of 42 U.S.C. § 233. As a result, the Court will order the substitution of the United States as the proper defendant in this case. Additionally, the Court finds Plaintiff has failed to exhaust her administrative remedies under the FTCA and her claims are dismissed without prejudice.

IT IS ORDERED that the United States is substituted as the Defendant in this case.

IT IS FURTHER ORDERED that Plaintiff's Complaint is DISMISSED WITHOUT PREJUDICE for lack of subject matter jurisdiction.

Dated this 5th day of June, 2018.



NANCY D. FREUDENTHAL
UNITED STATES DISTRICT JUDGE